

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

TRESSA SHERROD, *et al.*,

Plaintiffs,

v.

WAL-MART STORES,
INC., *et al.*,

Defendants.

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Case No. 3:14-cv-454

Judge Walter H. Rice

ORDER OVERRULING MOTION *IN LIMINE* TO EXCLUDE EVIDENCE
AND ARGUMENT REGARDING WAL-MART FAILING TO PROVIDE
NOTICE AND/OR SIGNAGE THAT OHIO IS AN OPEN CARRY STATE
OF DEFENDANTS WAL-MART STORES, INC., AND WAL-MART
STORES EAST, L.P. (DOC. #350)

Before the Court is the Motion *in Limine* to Exclude Evidence and Argument Regarding Wal-Mart Failing to Provide Notice and/or Signage that Ohio is an Open Carry State of Defendants Wal-Mart Stores, Inc., and Wal-Mart Stores East, L.P. (collectively, "Wal-Mart").¹ (Doc. #350). Wal-Mart notes that under Ohio law, there is a presumption that customers are aware that open carry of a firearm in a business is legal, and unless a business owner expressly intends to opt out of

¹ The Motion was not brought on behalf of Defendant Wal-Mart Store #2124. However, the Court assumes that any company-wide policies or lack thereof would apply equally to Store #2124.

allowing open carry, the owner is not required by law to post signage about open carry in its store. (*Id.* at PAGEID 20740-41, citing *State v. Massingill*, 8th Dist. Cuyahoga No. 109818, 2021-Ohio-2674, ¶15 (Aug. 15, 2021); Gary White Dep., Doc. #224-1², PAGEID 15651). Wal-Mart argues that, because individuals are presumed to know the law, and Wal-Mart was not required to notify customers that it allowed open carry, the opinion of Plaintiffs' expert, Gary White, that Wal-Mart was negligent in not posting a sign reading, "Walmart is not a follower in all of the policies and procedures of other retail stores," is speculative and irrelevant, and should be excluded. (*Id.*, quoting Doc. 224-1, PAGEID 15652). It should further be excluded, Wal-Mart asserts, because White conceded that he cannot determine whether "Walmart's decision to allow the open carry of firearms in its stores in Ohio . . . in any way play[ed] into Mr. Crawford's death." (*Id.*, quoting Doc. 224-1, PAGEID 15651).

Plaintiffs do not dispute that: (1) customers are presumed to know the law; (2) it was lawful for an individual to open carry in Wal-Mart under Ohio law; (3) Wal-Mart took no position on whether it wanted customers to be able to open carry in Wal-Mart stores; and (4) Beavercreek, Ohio, police responding to Ronald Ritchie's 911 call were aware of Ohio's open carry law and its application to Wal-Mart. (Memo. in Opp., Doc. #353, PAGEID 20764). However, they argue that Wal-Mart's lack of any open carry policy or signage, and its not notifying customers that open carry was permissible in the store, while both legal, are

² White's deposition was filed under seal. (Notice of Filing, Doc. #224).

evidence of a lack of reasonable care in ensuring the premises were “in a reasonably safe condition so that [decedent John H. Crawford, III] would not be exposed to danger unreasonably or unnecessarily.” (*Id.* at PAGEID 20765). They note that the Court, in adjudicating Wal-Mart’s summary judgment motion, rejected Wal-Mart’s position that “because Ohio is an open carry state, it was unforeseeable that a customer lawfully carrying a pellet rifle in the store would be shot and killed by a policeman[,]” and instead concluded, “as a matter of law, that Wal-Mart had a duty to take reasonable precautions to protect its business invitees from the dangers associated with the unsecured display of the MK-177 pellet rifles.” (*Id.* at PAGEID 20765-66 (internal quotation marks omitted), quoting Decision and Entry, Doc. #273, PAGEID 19999, 20001).

Plaintiffs further note that the Court, in its Decision overruling Wal-Mart’s motion *in limine* to exclude White’s testimony entirely, held that White was qualified to give an opinion on whether Wal-Mart met industry standards, and that any perceived deficiencies in his qualifications and opinion (a) could be brought out by Wal-Mart on cross-examination, and (b) go to the weight the jury should afford his opinion, rather than the admissibility of his opinions at all. (Doc. #353, PAGEID 20766-67, quoting Decision and Entry, Doc. #280, PAGEID 20075-76, 20079). They argue that, because White’s opinion has been adjudged relevant and admissible, he should be allowed to testify about whether Wal-Mart’s lack of notice or signage to customers or policy regarding customers open carrying

constituted a breach of its duty of care. (*Id.* at PAGEID 20767-68, citing FED.R.EVID. 401-02).

In its Reply, Wal-Mart reiterates its position that, because Wal-Mart was not required to post any signage about open carry, “[t]o allow Plaintiffs to argue or present the expected, speculative testimony of Mr. White that Wal-Mart *should have* posted notice and/or signage regarding Ohio’s Open Carry laws would only result in the prejudice to Wal-Mart[.]” (Doc. #368, PAGEID 20900 (emphasis in original), citing S.C. Williams Dep., Doc. #121, PAGEID 2451; Doc. #224-1, PAGEID 15606, 15651;).

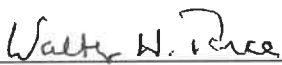
As Plaintiffs note, White’s opinion that Wal-Mart “has no policy against guns being carried in their stores” and “neither has a public statement [n]or posting of a policy for customers who intend to carry guns while shopping” was known to Wal-Mart and the Court at the time Wal-Mart moved to exclude White entirely and when the Court overruled that motion. (Doc. #353, PAGEID 20766-67, quoting White Report, Doc. #353-1, PAGEID 20831, ¶ 11; citing Motion to Exclude, Doc. #188; Doc. #224-1; Doc. #280). The Court also sees no reason to depart from its previous ruling that White’s “extensive experience in the retail industry” cleared the *Daubert v. Merrell Dow Pharma., Inc.*, 509 U.S. 579 (1993), hurdle and enabled him to testify as to standard of care. This previous ruling encompasses the opinions White has as to Wal-Mart’s open carry notices and policies or lack thereof (Doc. #280, PAGEID 20075); any perceived shortcomings in his opinion as to the adequacy of training and staffing policies (a) may be addressed by Wal-Mart

on cross-examination; and (b) go to the weight afforded the evidence, a jury determination. (*Id.* at PAGEID 20075-76).

For the foregoing reasons, Wal-Mart's Motion (Doc. #350) is OVERRULED. White may testify on the question of whether Wal-Mart adhered to the standard of care on notice or signage as to Ohio being an open carry state.

IT IS SO ORDERED.

August 27, 2024



WALTER H. RICE, JUDGE
UNITED STATES DISTRICT COURT